Supreme Court of the United States

OCTOBER TERM, 1962

No. 844

HAROLD A. BOIRE, REGIONAL DIRECTOR, TWELFTH REGION, NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

THE GREYHOUND CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

[fol. 1]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 4414-Civil T.

HAROLD A. BOIRE, Regional Director, National Labor Relations Board, APPELLANT

vs.

THE GREYHOUND CORPORATION, a Delaware Corporation, APPELLEE

COMPLAINT—Filed May 23, 1962.

THE GREYHOUND CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of Delaware, plaintiff herein, complaining against HAROLD A. BOIRE, AS REGIONAL DIRECTOR, TWELFTH REGION, NATIONAL LABOR RELATIONS BOARD, respectfully shows:

1. The plaintiff herein is a Delaware corporation, having its principal place of business at Chicago, Cook County, Illinois, is engaged primarily in the business of interstate motor carriage of persons and freight, and is engaged in such business within the area comprising the Tampa Division of the Southern District of Florida. [fol. 2] Southern Greyhound Lines Division is an operating division and not a separate corporation.

2. The defendant is Harold A. Boire, against whom this action is brought in his capacity as Regional Director of the Twelfth Region of the National Labor Relations Board, the principal offices of which Region are located in Tampa, Hillsborough County, Florida, and the said defendant is a resident of Hillsborough County, Florida.

3. This is a civil action arising under an Act of Congress regulating commerce, to-wit, the Labor Management

Relations Act, 1947, as amended (29 USC, Section 151, et seq., also known as the National Labor Relations Act, and hereinafter referred to as the "Act").

4. The execution of the election order of the National Labor Relations Board, hereinafter referred to would constitute a denial of due process to the plaintiff, and said execution would be an arbitrary, unjust, and illegal abuse of the power of said Board, and this Court has jurisdiction to enjoin the execution of said election order, the plaintiff having property rights entitled to protection by this Court sitting as a Court of Equity under the due process clause of the Constitution of the United States, to-wit, the Fifth Amendment to the Constitution of the United States.

5. This Court has jurisdiction of this action by virtue of the provisions of Sec. 24 (8) of the Judicial Code, 28 USC, Sec. 1337.

6. The defendant, unless enjoined as herein prayed, will deprive the plaintiff of rights accruing to plaintiff under and by virtue of said Act, said rights being not to be a party to a representation proceeding under said Act where the persons constituting the unit for purposes of collective bargaining are not the employees of the plaintiff. [fol. 3] Plaintiff's right arises out of the following provisions of the Act:

(a) Sec. 9 (c) (1) of the Act, which provides as follows:

> "(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—
>
> "(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that *their employer* declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized *by their employer* as the bargaining

representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." (Emphasis added.)

(b) Sec. 2 (3) of said Act, which provides that the term "employee" shall not include any individual having the status of an independent contractor.

[fol. 4] (c) Sec. 8 (a) (5) of said Act, which provides that it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his *employees*.

(d) Sec. 9 (a) of said Act, which provides that representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

7. The findings of the National Labor Relations Board contained in the footnotes to the Decision and Direction of Election in case No. 12-RC-1209, attached hereto and incorporated herein by reference as Exhibit "A", are in excess of the National Labor Relations Board's delegated powers and contrary to the provisions of the Act, and the same are arbitrary and capricious and without authority in law or fact, and violate plaintiff's rights under said Act, as hereinabove set forth.

8. The said findings of said Board show on the face of the said Decision and Direction of Election that the plaintiff is not the employer of the persons alleged to constitute an appropriate unit as set forth in said paragraph 4 of said Decision and Direction of Election, in that the very findings show that the employer of the persons in said unit is Floors, Inc., of Florida, and not the plaintiff, and that the actions of the plaintiff with respect to such employees of Floors, Inc., of Florida are insufficient in law to make the plaintiff the employer of such employees.

9. The plaintiff and Floors, Inc., of Florida have no common identity and do not constitute a single entity or [fol. 5] a joint entity, in that the two corporations do not have common directors, common stockholders, common officials, or any mutuality of operating control. Thus, the two corporations could not lawfully be required to bargain collectively with representatives of the persons in the alleged appropriate unit as the term collective bargaining is defined in Sec. 9 (a) of the Act.

10. In addition to the factors described in the aforesaid Decision and Direction of Election, constituting the relationship between Floors, Inc., of Florida and its employees, Floors, Inc., of Florida also pays social security taxes with regard to such employees, withholds Federal income taxes of such employees, maintains unemployment compensation for such employees, maintains workmens' compensation for such employees, trains such employees for their particular jobs, supervises such employees, and selects such employees as it sees fit. The plaintiff does none of these things with respect to such employees.

11. As a matter of law, the employees of an independent contractor such as Floors, Inc., of Florida cannot at the same time and place and with regard to the same employment be the employees of plaintiff.

12. Under date of May 3, 1962, the National Labor Relations Board issued and mailed to the plaintiff its Decision and Direction of Election in said Board's case No. 12-RC-1209, a true and correct copy being Exhibit "A" attached hereto.

13. As more fully appears in said Decision and Direction of Election, the defendant has been ordered and di-

rected to direct and supervise an election within thirty (30) days from and after May 3, 1962, wherein certain porters, janitors and maids working at the plaintiff's bus terminals in Miami, St. Petersburg, Tampa and Jackson-[fol. 6] ville, Florida, will cast their secret ballots to determine whether or not they desire to be represented by the labor union named in said Decision and Direction of Election for the purposes of collective bargaining with plaintiff and Floors, Inc., of Florida, predicated upon a finding by a majority of the National Labor Relations Board, as set forth in the footnotes of said Decision and Direction of Election, that the plaintiff and said Floors, Inc., of Florida are joint employers of said employees.

14. In the hearing on this matter which preceded the issuance of the Decision and Direction of Election in the National Labor Relations Board case No. 12-RC-1209, the plaintiff vigorously asserted and adduced evidence in support of its contention that it was not the employer of the persons comprising the unit described in said Decision and Direction of Election.

15. One or more days subsequent to May 11, 1962, the plaintiff received from the office of the defendant a copy of a letter dated May 11, 1962, addressed to Alexander E. Wilson, Jr., Esquire, with a carbon copy to plaintiff, a true and correct copy thereof being attached hereto and incorporated herein by reference as Exhibit "B".

16. The plaintiff received, one or more days subsequent to May 17, 1962, a letter addressed to one of its attorneys from the office of the defendant; dated May 17, 1962, a true and correct copy of which letter is attached hereto and incorporated herein by reference as Exhibit "C".

17. It is evident from Exhibits "A", "B" and "C", attached hereto, that the proposed election, of which plaintiff complains herein, will be held and conducted by the defendant on or about May 28 or May 29, 1962, unless the same be restrained and enjoined, as herein prayed.

[fol. 7] 18. The plaintiff and Floors, Inc., of Florida, a wholly owned subsidiary of Floors, Inc., a Georgia corporation, are parties to agreements, true and correct copies of which are attached hereto and incorporated

herein by reference as Exhibits "D-1", "D-2", "D-3", "D-4" and "D-5".

19. In Civil Action No. 3047 in the United States District Court, Southern District of Florida, Jacksonville Division, wherein the plaintiff herein was the plaintiff and the petitioning union in National Labor Relations Board case No. 12-RC-1209 was the defendant, the Honorable Bryan Simpson, United States District Judge, made and caused to be entered an Order and Findings of Fact and Conclusions of Law in support thereof, both dated July 27, 1955, wherein said Court found Floors, Inc., of Florida to be an independent contractor with regard to the contract between plaintiff and Floors, Inc., of Florida, attached hereto as Exhibit "D-1". A certified copy of said Order is attached hereto and incorporated herein by reference as Exhibit "E-1", and a certified copy of said Findings of Fact and Conclusions of Law is attached hereto and incorporated herein by reference as Exhibit "E-2".

20. The plaintiff has no adequate remedy at law for the following reasons:

(a) If the election be held, and the persons comprising the unit described in the Decision and Direction of Election vote in the majority for the proposed union representative, plaintiff will have no right of judicial review whatsoever until and unless plaintiff refuses to bargain with said selected representative and is charged with and found guilty of committing an unfair labor practice by such refusal, and a proceeding for enforcement is initiated by and prosecuted by the National Labor Relations Board in the United States Court of Appeals for [fol. 8] the Fifth Circuit, all of which procedure is contingent and costly and constitutes unconscionable delay in the judicial determination of plaintiff's rights.

(b) If a majority of the persons comprising the purported appropriate unit as described in the Decision and Direction of Election vote against being represented by the union seeking representative status, the plaintiff will have no recourse to determine its legal rights and status.

(c) So long as the conclusion of the National Labor Relations Board, as expressed in the Decision and Direc-

tion of Election in case No. 12-RC-1209 is effective, said Decision will represent a real or apparent determination that the persons in the said unit are the employees of plaintiff, and plaintiff may readily be the victim of concerted activities on the part of said employees, from which plaintiff could and would suffer irreparable loss and damage.

(d) So long as said Decision and Direction of Election is extant and has not been effectively set aside by judicial decree, plaintiff will be subjected to being charged with responsibility for social security, unemployment compensation, workmens' compensation, and similar matters with respect to such persons.

21. The action by the defendant and those subject to his authority and direction, as proposed in Exhibits "A", "B" and "C" attached hereto, is without authority of law.

WHEREFORE, plaintiff respectfully prays:

(a) That this Court enter instanter its temporary restraining order, pending hearing, temporarily restraining and enjoining the defendant and all persons acting in the stead of the defendant or under the direction or control of the defendant from conducting a representation election pursuant to the above referred to Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209.

[fol. 9] (b) That this Court issue its rule to show cause, directed to the defendant, requiring the defendant to be and appear before this Court on a day certain to show cause, if any he can, why a temporary injunction should not issue restraining and enjoining the defendant and all persons acting in the stead of the defendant or under the direction and control of the defendant from conducting a representation election pursuant to the above referred to Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209; and that upon the hearing on said show cause order, a temporary injunction issue so restraining and enjoining the defendant.

(c) That upon final hearing, this Court issue a permanent injunction, permanently restraining and enjoining

the defendant and all persons acting in the stead of the defendant or under the direction and control of the defendant from conducting a representation election pursuant to the above referred to Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209.

(d) That this Court issue an appropriate order striking down and setting aside the said Decision and Direction of Election, herein referred to.

(e) For such other and further relief as in equity may be deemed meet and proper.

/s/ Warren E. Hall, Jr.
/s/ Chesterfield H. Smith
/s/ Wofford H. Stidham

Address:

P. O. Box 1068
245 South Central Avenue
Bartow, Florida

Attorneys for Plaintiff.

[fol. 10] EXHIBIT "A" TO COMPLAINT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
THE GREYHOUND CORPORATION (SOUTHERN GREYHOUND LINES DIVISION) AND FLOORS, INC. OF FLORIDA,[1] EMPLOYER,

and

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL-CIO, PETITIONER

Case No. 12-RC-1209

Decision and Direction of Election

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.

Upon the entire record, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization(s) named below claim(s) to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

[fol. 11] 4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9 (b) of the Act:

All porters, janitors[2] and maids working at the Greyhound Corporation's bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida, excluding all other

[1] Names appear as corrected at the hearing. Herein, they are referred to as Greyhound and Floors, respectively.

[2] The Petition was amended at the hearing to include janitors.

employees of the Greyhound Corporation and Floors, Inc. of Florida.[3]

[3] Petitioner seeks a single unit of all porters, janitors and maids employed in the above-described Greyhound terminals, contending that Greyhound is the Employer of the employees sought, or at least their joint employer with Floors, and that the unit is appropriate as a residual unit of all unrepresented Greyhound employees at the terminals in issue. Alternatively, Petitioner contends that even if the Board finds that the employees sought are employed by Floors, and that Floors is an independent contractor, the unit sought is still appropriate because such employees comprise a homogeneous, distinct group. Greyhound and Floors contend that the porters, janitors and maids are employed by Floors, an independent contractor, and Floors further argues that the appropriate unit consists of either all its employees in the above-described cities or three separate units of all its employees in (1) Tampa-St. Petersburg, (2) Miami, and (3) Jacksonville. Petitioner is unwilling to represent Floors' employees who do not work at the above-described terminals.

It appears that Floors hires, pays, disciplines, transfers, promotes and discharges the porters, janitors and maids. However, it also appears that Greyhound's terminal managers confer with Floors' supervisors in setting up work schedules and in determining the number of employees required to meet those schedules. Moreover, it also appears that Floors' supervisors may visit the Greyhound terminals on an irregular basis and on occasion may not appear for as much as two days at a time; and that the employees sought, including porters in handling baggage, receive work instructions from Greyhound terminal officials. In addition, the record also shows that Greyhound, on one occasion, prompted the discharge of a porter whom it felt to be an unsatisfactory employee. In view of the common control over the employees sought, we find both Greyhound and Floors to be their joint employer. See *Panther Coal Company, Inc., et al.*, 128 NLRB 409, *West Texas Utilities Company*, 108 NLRB 407, 413-414, enf'd 218 F.2d 824 (C.A. 5); cert. denied, 349 U.S. 953. We find further that such a unit consisting of all employees under the joint employer relationship is appropriate.

PHILIP RAY RODGERS, MEMBER, dissenting:

On the basis of the record herein, I would find that the employees sought are employees of Floors, that Floors is an independent contractor, and that the only appropriate unit is one comprised of all of Floors' employees in the above-described localities. Accordingly, I would dismiss the petition.

Philip Ray Rodgers,
Member
National Labor Relations Board

[fol. 12] Direction of Election

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or re-[fol. 13] instated before the election date. Those eligible shall vote whether (or not) they desire to be represented for collective bargaining purposes, by Amalgamated Association of Street, Electric Railway and Motor Coast Employees of America, AFL-CIO.

FRANK W. MCCULLOCH,
Chairman,

BOYD LEEDOM,
Member,

JOHN H. FANNING,
Member,

GERALD A. BROWN,
Member,

(Seal) National Labor Relations Board.

Dated, Washington, D. C., May 3, 1962.

EXHIBIT "B" TO COMPLAINT

NATIONAL LABOR RELATIONS BOARD

TWELFTH REGION

Ross Building, 112 East Cass Street, Tampa 2, Florida
Telephone 2-4623

May 11, 1962

Re: Southeastern Greyhound Lines, and Floors, Inc.
Case No. 12-RC-1209

Alexander E. Wilson, Jr., Esq.
615 Rhodes-Haverty Building
Atlanta, Georgia

Dear Mr. Wilson:

As you know, the Decision and Direction of Election in this matter requires that the election be held within thirty days from May 3, 1962, the date of issuance thereof, which means not later than June 1, 1962.

[fol. 14] Accordingly, on the assumption that the Board will take early action on your motion for reconsideration and that such motion may possibly be denied we propose to promptly pursue the working out of tentative election arrangements and request your cooperation to that end. Will you, therefore, please promptly furnish us with the following:

1. Suggested date of election. A date mutually agreeable to the Petitioner is, of course, desirable.
2. Suggested hours of voting at each location which will afford reasonable opportunity for all to vote.
3. Suggested exact location on the employer's premises in each terminal where the vote can best be conducted.
4. Eligibility date for election which shall be the last payroll immediately preceding May 3, 1962, the date of the Decision. If different in the various cities, so state and give the date for each location involved.

5. Time and place of preelection conference to check eligibility list. Normally this precedes the start of the scheduled voting by at least one hour. In this instance, it can possibly be handled by a central conference at this office. If centrally held at this office or at any other point it must be sufficiently in advance of the election for us to then deliver or send the eligibility voting lists to the Board Agents who will conduct the elections at the various polls, or in the alternative, possibly separate conferences at each of the polls shortly before voting time may be desired.
6. Shall ballots be impounded at each poll for sending or delivery to this office for commingled count of ballots?

[fol. 15] Your prompt and full cooperation in devoloping the needed facts relative to this election will be appreciated.

Very truly yours,

/s/ Norman A. Cole
Assistant to Regional Director

CC: Floors, Inc.
840 DeKalb Avenue, Atlanta, Georgia

Southeastern Greyhound Lines
5260 Peachtree Industrial Blvd., Chamblee, Georgia

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, 67 Willowood Circle, S.E., Atlanta, Ga.

I. J. Gromfine, Esq.

Zimring, Gromfine & Sternstein
1001 Connecticut Ave., Washington, D. C.

P.S. The observations and suggestions of the petitioning labor organization are likewise solicited.

EXHIBIT "C" TO COMPLAINT

NATIONAL LABOR RELATIONS BOARD

TWELFTH REGION

Ross Building, 112 East Cass Street, Tampa 2, Florida
Telephone 223-4623

May 17, 1962

Re: The Greyhound Corporation (Southern Greyhound Lines Division) and Floors, Inc. of Florida Case No. 12-RC-1209

Arthur W. Milam, Esq.
1200 Greenleaf Building
Jacksonville, Florida

Dear Mr. Milam:

Through oversight, a copy of our letter of May 11 to Mr. Wilson was not sent to you as counsel for The Grey- [fol. 16] hound Corporation (Southern Greyhound Lines Division), but it is enclosed herewith. However, possibly Mr. Wilson, as counsel for Floors, Inc. of Florida, may have been in touch with you already relative to the facts contained therein.

As you know, Mr. Wilson, in behalf of Floors, Inc. of Florida, has filed a Motion for Reconsideration. However, in the meantime it is necessary that we proceed with the election arrangements.

Since I believe the terminals are under the control of your client, doubtless your client is in position to furnish us with most, if not all, of the information requested in our letter of May 11. Since we must proceed with all possible haste in working out these election arrangements, please note that I will telephone you Friday afternoon, May 18, by which time I hope you may be able to have answers to at least some of the questions for us.

The thought occurs that possibly the baggage room might be suitable as a place for the election, although possibly other even better space may be available. It is

also suggested that the election time should perhaps straddle the afternoon shift change which I understand is at 3:00 p.m. in all four terminals involved herein. If it is deemed necessary to hold an additional early morning voting session at about 7:00 a.m. to cover the few who work on the third shift, that, of course, is agreeable with us.

We assume that your client is ready and willing to make the usual posting of election notices at the terminals at such time as we mail them directly to such points for posting. It is suggested you may wish to so instruct the terminal managers in advance, so that when the notices are mailed there will be no delay in such posting.
[fol. 17] As of now, we are thinking in terms of possibly conducting the election on either May 28 or May 29 and you will understand, therefore, that we must move along rapidly with election arrangements.

Very truly yours,

NORMAN A. COLE
Assistant to Regional Director

AIRMAIL

Enclosure

cc: The Greyhound Corporation
(Southern Greyhound Lines Division)
5260 Peachtree Industrial Blvd.
Chamblee, Georgia

The Greyhound Corporation
(Southern Greyhound Lines Division)
1352 Vega Street
Jacksonville, Florida

Alexander E. Wilson, Jr., Esq.
615 Rhodes-Haverty Building
Atlanta, Georgia

Floors, Inc. of Florida
840 DeKalb Avenue
Atlanta, Georgia

EXHIBIT "D-1" TO COMPLAINT

STATE OF FLORIDA
COUNTY OF DUVAL

THIS AGREEMENT entered into this 11th day of November, 1954, by and between FLOORS, INC., a Georgia corporation of Atlanta, Fulton County, Georgia, Party of the First Part, and FLORIDA GREYHOUND LINES (DIVI-
[fol. 18] SION OF THE GREYHOUND CORPORATION) of Jacksonville, Duval County, Florida, Party of the Second Part:

WITNESSETH:

For and in consideration of the premises and of the mutual covenants contained herein, it is agreed as follows:

1.

Party of the First Part agrees that beginning on the 28th day of November, 1954, at 12:01 o'clock A. M., it will provide and perform twenty-four (24) hour daily janitorial and loading services at the Greyhound Bus Terminal, 204 West Bay Street, Jacksonville, Florida, in accordance with the description and definition of work set out in the supplementary schedule "A", initialed by the parties, attached hereto, and made a part hereof.

2.

Party of the First Part further agrees that all work provided for herein shall be performed on schedule to the satisfaction of the terminal management, except when prevented by strike, act of God, accidents or other circumstances beyond its control. A joint inspection of all service schedules and of all work performed will be made at least once each month.

3.

Party of the First Part further agrees to furnish bonded labor and supervision, together with such materials and equipment as may be necessary to satisfactorily perform its obligations under this contract, and to comply

fully with all applicable laws and the rules, regulations and requirements of all regulatory bodies having jurisdiction.

[fol. 19]

4.

Party of the First Part further agrees that at all times during the term of this contract it will maintain workmen's compensation, bodily injury, property damage and liability insurance, and that it will furnish to Party of the Second Part certificates which shall evidence this insurance, properly insuring both parties hereto.

Party of the First Part further agrees to protect, defend, indemnify and hold harmless Party of the Second Part, its officers, agents, servants and employees with respect to any loss, claims, liabilities or damages of any nature whatsoever which may arise out of the performance of this agreement with Party of the Second Part, and will furnish to Party of the Second Part certificate which shall evidence this insurance carried for this protection.

5.

Party of the Second Part agrees to pay Party of the First Part an annual sum of Fifty-three Thousand Seven Hundred and Sixty-Eight Dollars ($53,768.00) for all services performed hereunder. This contract amount shall be payable in equal weekly installments of One Thousand and Thirty-Four Dollars ($1,034.00) payable within seven (7) days after receipt of billing

Party of the First Part agrees to reduce the stipulated weekly billing of One Thousand and Thirty-four Dollars ($1,034.00) proportionately for all reductions in man hours per week below seven hundred and sixty-five (765) man hours, such adjustments to be applied beginning the first whole work week following the week in which the revision was made.

Party of the First Part agrees to keep detailed cost records of services performed and after the figures for the [fol. 20] first ninety (90) days of operation under this contract are available will promulgate an hourly rate for services performed and offer it for consideration by Party

of the Second Part in the event it results in a lesser payment. Similar analysis will be made on the same basis quarterly by the Party of the First Part.

6.

It is mutually agreed between the parties that this agreement shall continue from year to year, provided, however, that either party may terminate this contract by serving thirty (30) days' written notice of its intention to terminate upon the other party at any time.

7.

It is further mutually agreed between the parties that if unforeseen difficulties arise due to the existence of labor contracts Party of the Second Part has the right to postpone the effective date, temporarily suspend or terminate this contract without advance notice being required. Should termination be necessary within the first ninety days of this contract, Party of the Second Part will pay Party of the First Part the actual cost of special cleaning, not to exceed Three Hundred Dollars ($300.00), which shall be in addition to pro rata billing for normal services:

This contract contains the entire agreement between the parties hereto, and confirms all of the understandings and representations and supersedes any and all previous agreements between the parties, both oral or written, concerning the subject matter hereof.

[fol. 21] IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, this 11th day of November, 1954.

Floors, Inc.

(Seal)

By /s/ A. R. Andrews
Sales Manager

Florida Greyhound Lines
(Division of the Greyhound Corporation)

(Seal)

By /s/ P. G. Howe
President

SCHEDULE "A"

PART I

CLEANING SERVICES SCHEDULES

AREAS: Entire building of Greyhound Bus Terminal, 204 West Bay Street, Jacksonville, Florida, with exceptions only as follows:

Exceptions: 1. Restaurant.
2. Men's restroom adjoining main waiting room.
3. Gordon Pillow Service room.

TIMES: Cleaning services shall be continuous, twenty-four hours daily, seven days weekly, commencing on starting date and continuing uninterrupted.

DAILY SERVICES:

DESKS, COUNTERS, EQUIPMENT, LEDGES, SILLS, RAILS, etc., will be dusted.

RESTROOMS: (with exception of White Men's)

1. FLOORS will be soap mopped and rinsed.
2. URINALS, COMMODES, BASINS will be scoured and disinfected.

[fol. 22] 3. STALL PARTITIONS will be wiped down.

4. TOILET TISSUE, TOWELS, SOAP, etc., will be replaced as needed in proper dispensers from stocks of same items provided by Greyhound Terminal.

INTERIOR GLASS will be washed as needed.

FLOORS, all types, entire building, will be swept and/or dust mopped.

TRASH and DEBRIS will be collected and removed to exterior collection.

ASH TRAYS, SAND URNS, etc., will be emptied and washed, individually.

CUSPIDORS will be emptied and cleaned and refilled with water.

DRINKING FOUNTAINS will be cleaned, polished and disinfected.

GLASS DOORS, all entrances, will be washed.

HARD SURFACE FLOORING will be cleaned, as soil occurrence dictates, by mopping, machine scrubbing, etc.

SEATS dusted and SEAT END STANCHIONS washed.

DISPATCHER'S OFFICE AND RESTROOM swept and dust mopped three times daily.

FURNITURE and OFFICE EQUIPMENT dust mopped.

SIDEWALKS and STREET CURBING adjacent to front and side of building will be swept as needed.

CONCOURSE PAVEMENT and SIDEWALKS will be swept and debris and trash policed as needed.

PARKING AREA will be policed as needed.

[fol. 23] WEEKLY SERVICES:

COMPOSITION FLOOR COVERING will be cleaned, waxed as needed, polished.

VENETIAN BLINDS will be dry dusted.

WINDOWS, street level, will be washed, both sides. (NO WASHING intended for plate glass windows in Restaurant.)

LIGHT FIXTURES will be dusted ONCE MONTHLY.

HIGH LEDGES, SILLS, RAILS, PIPES, DUCTS, STEAM RADIATORS, LOUVRES, etc., will be dusted and/or vacuumed ONCE MONTHLY.

WALLS will be dry dusted ONCE MONTHLY.

CONCOURSE PAVEMENT will be scrubbed and scoured ONCE MONTHLY, as needed.

WINDOWS, SECOND FLOOR, Colored Waiting Area, will be washed, both sides, ONCE MONTHLY. Also windows in offices, ONCE MONTHLY.

MINOR PLUMBING REPAIRS as needed.

LIGHT BULBS and FLUORESCENT TUBES will be replaced as needed, from stock provided by Greyhound Terminal.

SPECIFICS, Cleaning:

EMERGENCY CLEANING, at all times, will be attended per occurrence within normal agreements of this contract.

DAILY SERVICES, outlined herein, will be repeated, as needed, for the daily and nightly cleaning best needed for proper results and proper appearances at all times; by discretion of contractor, contractor's supervisory staff and in agreement with The Terminal Management.

[fol. 24] SPECIAL EXCLUSIONS:

1. It is not the intention of the contractor to attempt to revitalize painted surfaces, i. e., walls and woodwork, where paint has deteriorated to a large degree. NO WALL WASHING will be accomplished whatsoever where it is found that such cleaning will further damage, thin-out, or in any manner, further depreciate the painted surface.

Normal cleaning will be observed in keeping finger prints, smudges, etc., off DOOR FRAMES, COUNTERS, LEDGES, etc., per soil occurrence.

PART II

JANITORIAL AND LOADING SERVICES SCHEDULES FLOORS, INC., as contractor, agrees to furnish supervised labor, in uniform approved by the Terminal Management, in total amounts of man-hours daily to accomplish all the normally practiced services in the Greyhound Bus Terminal, Jacksonville, Florida, as follows:

1. For handling all baggage and express shipments; loading and unloading buses.
2. For checking the level of fuel, oil, water, etc., and replenishing as needed on all pooled buses.
3. For cleaning pooled buses, interior, windshields, rear view mirrors, also windows when needed.
4. For convenience duties.

FLOORS, INC., agrees to furnish not less than the total seven hundred and sixty-five (765) weekly man hours shown in the following schedule of assignments except that schedule revisions including increases or decreases in total weekly man hours may be made from time to time subject to the approval of the Terminal Management.

[fol. 25] SCHEDULE A

	Days off:
1. 12:30 AM—4:00 AM (lunch) 5:00 AM —10:00 AM	Mon.-Tue.
2. 2:15 AM—7:15 AM (lunch) 8:45 AM— 12:15 PM	Sat.-Sun.
3. 6:00 AM—10:30 AM (lunch) 12 noon— 4:00 PM	Thurs.-Fri.
4. 6:45 AM—11:00 AM (lunch) 11:30 AM —3:45 PM	Tue.-Wed.
5. 10:00 AM—3:30 PM (lunch) 4:00 PM —7:00 PM	Sun.-Mon.
6. 2:30 PM—7:00 PM (lunch) 8:30 PM— 12:30 AM	Wed.-Thurs.
7. 4:45 PM—9:15 PM (lunch) 10:15 PM —2:15 AM	Sun.-Mon.
8. 5:00 PM—9:30 PM (lunch) 10:30 PM —2:30 AM	Sat.-Sun.
9. 9:45 PM—4:15 AM (lunch) 4:45 AM— 6:45 AM	Tue.-Wed.
10. Relieves #3 Fri.; #2 Sat.-Sun.; #1 (AM) Mon.-Tue.	Wed.-Thurs.
11. Relieves #8 Sat.-Sun.; #7 Mon.; #9 Tue.-Wed.	Thurs.-Fri.
12. Relieves #7 Sun.; #15 Mon.-Tue.; #6 Wed.-Thurs.	Fri.-Sat.
13. Relieves #5 Sun.-Mon.; #4 Tue.-Wed.; #3 Thurs.	Fri.-Sat.
14. 7:00 AM—3:30 PM daily except Wed. & Thurs. (relief days). Relief Wed. & Thurs. by #15; 8:00 AM—1:00 PM (lunch) 2:00 PM—5:30 PM	
15. 5:00 PM—1:30 AM, daily except Wed. & Thurs. Relieve #14 as shown with schedule #14. Off Mon.-Tues. by #12.	

[fol. 26] SCHEDULE B

1. Monday through Friday 5:00 AM—11:00 AM (lunch) 12 noon—2:30 PM; Saturday 1:00 AM—5:30 AM (lunch) 6:00 AM—10:00 AM; Sunday 6:30 AM—11:00 AM (lunch) 12 noon—4:00 PM.
Days off: Sun.-Mon.

2. Sunday through Thursday: 4:30 PM—9:30 PM (lunch) 10:00 PM—2:00 AM; Friday, 3:00 PM—9:30 PM (lunch) 10:00 PM—12 midnight; Saturday, 8:00 PM—2:30 AM (lunch) 3:00 AM—5:00 AM.
Days off: Thurs.-Fri.

3. Relieves Schedule 1 Sunday-Monday; #2 Thursday-Friday; Saturday only, extra; 10:30 AM—3:30 PM (lunch) 4:00 MP—7:30 PM.
Days off: Tue.-Wed.

It is agreed and understood by both parties to this contract that these Services Schedules are intended to maintain the highest standards of efficiency under existing circumstances at all times. All suggestions and helpful cooperation on the part of FLORIDA GREYHOUND LINES and TERMINAL MANAGEMENT considered by the contractor as obligatory and same shall be reciprocal in the event of additions to or deletions from these Services Schedules.

EXHIBIT "D-2" TO COMPLAINT

3-3-56

A REVISION OF THE AGREEMENT BETWEEN FLOORS, INC., AND FLORIDA GREYHOUND LINES (Division of The Greyhound Corporation): THE AGREEMENT OF NOVEMBER 11, 1954, WHICH BECAME EFFECTIVE AUGUST 21st, 1955, IS HEREBY ALTERED AND REVISED THIS DATE, MARCH 3, 1956, as follows:

I. Floors, Inc., as the contractor for all cleaning and porter services in the Jacksonville Greyhound Ter-
[fol. 27] minal (as all were defined in agreement of November 11, 1954), will now perform the identical services with only the following specific alterations in the agreement:

A. The original operating (terminal) schedule of seven hundred and sixty-five (765) work hours, guaranteed by Floors, Inc. is hereby made null and void and it is agreed that Floors, Inc. will furnish seven hundred and twenty-three (723) work hours in fulfillment of said altered schedule as set forth this date by the Terminal Manager of the Jacksonville Greyhound Terminal.

1. The terminal schedule work hours-total of 723 hours consisting of an actual total of 715 work hours to fulfill the terminal schedule and an additional total of 8 work hours above this terminal schedule, which shall be used in terminal cleaning.

B. It is further agreed that the original per annum (fixed) charge of $53,768.00 is hereby made null and void and that the agreed per annum charge is now made $56,645.00 for all services agreed to (by agreement of November 11, 1954), all services now being performed (excepting altered work hours totals), and all services agreed to be performed from this date forward.

C. The terminal schedule of 723 hours shall be increased or decreased by direction of the Terminal Manager, only. The alteration of these total hours (715 actual terminal schedule hours, only) shall be at the hourly rate, for decrease or increase, of $1.506¢ per hour. These added or decreased charges shall apply, weekly, as altered upwards or downwards, to the weekly invoicing to Florida Greyhound Lines by Floors, Inc. for the services rendered.

1. (The hourly rate of $1.506¢ for increase to, or decrease from, the fixed weekly invoicing price [fol. 28] of $1,089.33 shall have been obtained by a division of the total per annum fixed agreement price of $56,645.00 by the per annum total of 37,596 total work hours involved in terminal schedule fulfillment.)

D. All hours of overtime work involved in the proper handling of all porter services to baggage handling

and buses operations, above the guaranteed total of 723 work hours, shall be directed to be used, affected and operated as such by the Jacksonville Greyhound Terminal Manager, only.

1. Such direction to increase the work hours useage, at an overtime rate, based upon the particular worker or workers' hourly rate, over and above the present terminal schedule of 715 work hours, shall be the sole and only authority for Floors, Inc. to charge such directed overtime hours used to Florida Greyhound Lines, over-and-above the regular weekly invoicing of $1,089.33, at the following agreed rates as applicable:

(a) All workers employed by Floors, Inc. in the Jacksonville Greyhound Terminal at the hourly rate of $1.00 per hour shall be paid at the rate of $1.50 per each overtime hour by Floors, Inc. Each overtime hour used at the rate of $1.50 per hour shall be charged and invoiced to Florida Greyhound Lines as $1.75 per each overtime hour, net.

(b) All workers employed by Floors, Inc. in the Jacksonville Greyhound Terminal at the hourly rate of $1.25 per hour shall be paid at the rate of $1.875¢ per each overtime hour by Floors, Inc. Each overtime hour used at the rate of $1.875¢ per hour shall be charged and invoiced to Florida Greyhound Lines as $2.10 per each overtime hour, net.

[fol. 29] E. No overtime hours (for holiday traffic increases, emergencies, "rush" and/or "peak" periods), [will be charged] [initialed by JDS and ARA] without authorization of the Jacksonville Greyhound Terminal Manager. The Terminal Manager shall sign, or initial each order for overtime to be used by Floors, Inc. A duplicate copy of each overtime order made up and signed by the Terminal Manager shall be furnished to Florida Greyhound. Each order of authorization by the Terminal Manager for usage of overtime hours by Floors, Inc. shall include the work-

er's name, the worker's base hourly pay rate, the worker's overtime hourly pay rate and the net charge per this overtime hour to Florida Greyhound Lines by Floors, Inc.

II. These stated alterations, revisions and changes from the original agreement of November 11, 1954, contain and confirm all stipulations and agreements and confirms all understandings thereto in the procedures for handling all services and operations and the procedures for making all charges therein, the original agreement applying fully in all other respects.

FLOORS, INC.

/s/ A. R. Andrews
Vice President and Sales Manager

FLORIDA GREYHOUND LINES
(Division of The Greyhound Corporation)

/s/ J. D. Segal
Comptroller and Assistant Secretary

[fol. 30] EXHIBIT "D-3" TO COMPLAINT

AN AMENDMENT TO THE ORIGINAL AND REVISED AGREEMENTS, DATED NOVEMBER 11, 1954 AND MARCH 3, 1956, RESPECTIVELY, BETWEEN FLORIDA GREYHOUND LINES (Division of The Greyhound Corporation) AND FLOORS, INC., ENTERED INTO THIS 28th DAY OF SEPTEMBER, 1956, WITH THE FOLLOWING STIPULATIONS AND ALTERATIONS:

I. For the sole purpose of expanding services in the new Jacksonville Greyhound Bus Terminal.

II. For alteration of the methods previously used for invoicing and charging all work in the agreements to FLORIDA GREYHOUND LINES by FLOORS, INC.

III. For the purpose of providing extra cleaning labor over and above the normal daily maintenance program, for the initial heavy clean-up which is expected to be required for good quality appearances in the new terminal building.

IV. For the purpose of providing proper supervision and additional labor for bus loading as required.

IT IS AGREED AS FOLLOWS:

I. Expansion of cleaning services:

A. To permit FLOORS, INC. to increase its labor totals for expanded cleaning services by a total of 138.0 man hours over and above the present totals of hours presently being used in cleaning. The increase to be paid to workers by FLOORS, INC. at $1.00 per hour and leaving a net increase, for labor only, as follows:

Per week $138.00

B. To permit FLOORS, INC. to increase its supervision over the new expanded cleaning serv-

[fol. 31]

ices by an addition of one (1) full-time supervisor, as follows:

Per week ..... $ 85.00

C. To permit FLOORS, INC. to increase, as a direct result of the increment in basic labor and supervision, the correct accompanying overhead (which is 28% of total cost invoice, over the total of increased labor and supervision) as follows:

Per week	$ 86.72
TOTALS OF ALL INCREASES	$309.72

II. Alteration of invoicing methods:

A. It is agreed that FLOORS, INC. will invoice all work contained in the agreements to FLORIDA GREYHOUND LINES under a cost-plus arrangement, as follows:

1. The complete break-down of percentages progressions for arriving at the weekly total of invoice is hereby attached as EXHIBIT "A" and made part of this amendment by signatures of both parties.

2. The maximum guaranteed weekly total invoice charge is hereby stipulated, as follows:

Present total weekly firm price	$1,209.80
Total increased weekly labor etc.	309.72
	$1,519.52

3. The maximum guaranteed weekly invoice charge is hereby made part of this amendment and new method for pricing all total work invoice weekly as: $1,519.52.

[fol. 32]

III. Provision of extra cleaning labor (initial cleaning):

A. To permit FLOORS, INC. to perform extra and special heavy and initial cleaning in the new terminal for work that is expected to be required to achieve the best daily appearances during the

early days of occupancy of the new terminal, it is now agreed that for a period of exactly four (4) weeks, beginning on the first official day of occupancy and the first official day of regular cleaning and bus loading services in the new terminal, that during the first four (4) weeks, and only for this time, an additional charge by FLOORS, INC. in the amount of $125.00 per week is added to the maximum weekly charge, under the cost-plus method of invoicing all work accomplished.

The first four (4) weeks of work shall be invoiced under the cost-plus method at no more than $1,644.52, which is the maximum guaranteed price for all bus loading and cleaning services.

IV. Special considerations:

A. Supervision for cleaning: It is recognized by FLOORS, INC. that the addition of one (1) full-time supervisor for cleaning services may not be needed full-time after the first several months of the new terminal occupancy. In such event FLOORS, INC. guarantees that only a pro-rata part of this supervisor's salary wages will be applied to the total of payroll labor-supervision. It further assures FLORIDA GREYHOUND LINES that if a sizeable part of this supervisor's total work week hours are utilized by FLOORS, INC. elsewhere than in the new termnial, that that part of his wages will be charged to FLOORS, INC. only.

B. It is recognized by both parties that the new terminal is intended towards an attraction of new and added passenger volume to the present volume of business of such nature, now being enjoyed by
[fol. 33] the JACKSONVILLE GREYHOUND BUS TERMINAL, in all its facilities for such handling.

It is now agreed that if this expected volume increase occurs to the point of burdening the present bus-loading schedule, by addition of other bus-handling or added baggage handling duties and/or convenience duties, that FLOORS, INC. may be granted the addition of additional man hours,

as authorized by the Terminal Manager in writing, into the overall total of scheduled hours by altering, upwards, all increased and added hours to these schedules, at the rate of $1.506 per man hour added, same totals to be added to the weekly maximum guaranteed invoice charge.

These stated alterations, revisions and changes from the original agreement of November 11, 1954, and the Revised Agreement dated March 3, 1956, contain and confirm all stipulations and agreements and confirm all understandings in the procedures for handling all services and operations and the procedures for making all charges therein, the original agreement and the revised agreement applying fully in all other respects.

This amendment becomes effective on the first day the services are required at the new terminal.

FLOORS, INC.

.....

FLORIDA GREYHOUND LINES
(Division of The Greyhound Corporation)

.....

[fol. 34] EXHIBIT "A"

I. DEFINED COST-PLUS BREAK-DOWN OF COST-OF-LABOR-PLUS BILLING:

(The following percentages progressions from weekly basic labor totals to net weekly billing constitute the entire, agreed, manner in which all weekly billing will be made and under which method a guaranteed minimum price of $1644.52 weekly for the first four weeks and $1519.52 weekly thereafter for all services is affirmed.)

I.	All labor and attendant supervision (permanent on-job supervision)	72.0 %	of total cost
II.	Obligatory taxes to labor (Federal & State) including insurance on labor wages	5.2 %	of total cost
III.	Expendable materials for all nightly cleaning, only	6.3 %	of total cost
IV.	Machinery, placement & useage	2.1 %	of total cost
V.	Clerical handling all payrolls general supervision, transportation and all equipment other than expendable materials for cleaning, only	8.4 %	of total cost
VI.	Gross operating fee	6.0 %	of total cost
	Weekly, monthly or per annum total net billing	100.00%	

[fol. 35]

NOTE: Weekly invoicing to include; totals of labor and supervision; names of personnel included and total wages paid, weekly, these workers.

FLOORS, INC.

.....

FLORIDA GREYHOUND LINES
(Division of The Greyhound Corporation)

.....

President

EXHIBIT "D-4" TO COMPLAINT

GREYHOUND
(Trademark)

SOUTHEASTERN GREYHOUND LINES
Division of The Greyhound Corporation
1352 Vega Street • Jacksonville, Florida

November 13, 1957

Mr. Larry P. Martin, President
Floors, Inc.
840 DeKalb Avenue, N. E.
Atlanta, Georgia

Dear Mr. Martin:

This will confirm our conversation of yesterday on the telephone wherein I requested that your company furnish janitorial and baggage loading service in our Miami Bus Depot. We agreed that you would take over this work at 12:01 AM December 1, 1957.

It was agreed that the contract covering the Miami Depot would be on the same basis as the one we now have on the Jacksonville Depot, which is on a cost-plus basis. We further agreed that you would have one of your representatives meet me in Miami on November 22 to set up the work shifts and that it would be impossible to draw [fol. 36] up a contract until we had worked our work shifts out and know the exact number of employees or man hours that you would have to furnish us. This service is also to include the Miami City Ticket Office and the Miami Beach Terminal.

As outlined in your letter of November 7, this work being done on a cost-plus basis our overall cost would be either raised or lowered by the addition or subtraction of employees, whichever the case might be.

You also state in your letter that you anticipate paying employees an average of $1.20 per hour and supervisors $100.00 per week, but in the event you are able to hire employees at $1.00 per hour and supervisors at less money than the $100.00 this savings, of course, would

have to be reflected in your weekly statement to us as the whole operation will be based on cost-plus basis.

I am sending you an extra copy of this letter and ask that you please sign on the line provided so that we may have a record in our files that you have insurance covering Workmen's Compensation and liability with a clause showing that Greyhound will be held harmless in the event of any claim arising in connection with your services.

This contract should contain a termination notice by either party for any reason whatsoever on 30 day written notice, the same as the Jacksonville contract.

Very truly yours,

J. W. CABLE, Reg. Mgr.

This is to certify that Greyhound will be fully insured as outlined in the above letter. This insurance will become effective 12:01 AM December 1, 1957.

/s/ Larry P. Martin
LARRY P. MARTIN,
Pres. Floors, Inc.

[fol. 37] EXHIBIT "D-5" TO COMPLAINT

January 24, 1958

Mr. Larry P. Martin, President
Floors, Inc.
840 DeKalb Avenue, N. E.
Atlanta, Georgia

Dear Mr. Martin:

This will confirm our conversation of January 15, at which time I asked that you make arrangements to furnish us janitorial and loading service at our Tampa and St. Petersburg Terminals on the same basis that we have with you on our Miami Terminal. This service to become effective 12:01 A.M. February 1, 1958.

If possible, we would like for Southeastern Greyhound Lines to be named as co-insured on the insurance policy covering Tampa and St. Petersburg for liability.

It is agreeable with us for you to separate the payroll for loaders and divide this amount by 82% to obtain the total for that part of our billing.

Very truly yours,

J. W. CABLE
Regional Manager

JWC:um

EXHIBIT "E-1" TO COMPLAINT

Order Granting Plaintiff's and Denying Defendant's Motion for Summary Judgment, and Summary Declaratory Judgment

(Filed July 27, 1955.)

After due notice to counsel for the affected parties, this cause was heard on plaintiff's motion for summary [fol. 38] judgment (filed February 28, 1955) with affidavit of P. G. Howe attached, and upon defendant's motion for summary judgment (filed March 2, 1955) with affidavit of H. A. Phillips attached, and upon the entire record and file herein; thereafter, briefs and reply briefs were filed by counsel for the respective parties, with leave of Court; the Court has this day filed its Findings of Fact and Conclusions of Law herein;

Whereupon, upon consideration of the foregoing, it is

ORDERED and ADJUDGED:

1. The defendant's motion for summary judgment is denied.

2. The plaintiff's motion for summary judgment is granted and judgment is here entered for the plaintiff and against the defendant in accordance with the Findings of Fact and Conclusions of Law this day filed by the Court.

3. The Court thereupon finds and declares the rights and duties of the plaintiffs and defendants under the collective bargaining agreement of August 19, 1953 and in the controversy stated in the plaintiff's complaint and defendant's answer thereto to be as follows:

(a) Said collective bargaining agreement, neither expressly nor impliedly restricts the plaintiff from subcontracting the services covered by its contract of November 11, 1954 with Floors, Inc.

(b) The plaintiff is entitled to enter into and to put into effect said contract with Floors, Inc. of November 11, 1954.

(c) Said contract of November 11, 1954 is not a breach of the collective bargaining agreement between [fol. 39] plaintiff and defendant and the defendant is not entitled to prohibit or interfere with the plaintiff's exercise of its inherent rights of management involved in said contract of November 11, 1954.

DONE AND ORDERED at Jacksonville, Florida, July 27, 1955.

/s/ Bryan Simpson
United States District Judge.

Milam, Mellvaine, Carroll & Wattles
Coffee & Coffee

I certify the foregoing to be a true and correct copy of the original.

JULIAN A. BLAKE,
Clerk, United States District Court, Southern District of Florida

By: DAVID A. PELLICER
Deputy Clerk

(Seal)

Exhibit "E-2" to Complaint

Findings of Fact and Conclusions of Law.

(Filed July 27, 1955.)

In support of the order this day filed denying defendant's motion for summary judgment, granting plaintiff's motion for summary judgment and entering summary declaratory judgment, I make the following

Findings of Fact.

1. The plaintiff (hereinafter, the Company) is a corporation incorporated under the laws of the State of Delaware, and is a common carrier by motor vehicles engaged in the transportation of persons for compensation in interstate and intrastate commerce within the State of [fol. 40] Florida and elsewhere, pursuant to authority granted by the Interstate Commerce Commission and The Florida Railroad and Public Utility Commission.

2. The defendant (hereinafter, the Union) is a voluntary unincorporated labor organization and maintains its local offices in the city of Lake City, Florida, and each member of the defendant association is a citizen of a state other than the state of Delaware.

3. On August 19, 1953, the Company and Union entered into a written collective bargaining agreement wherein the Company recognized the Union as a bargaining representative for Company's operators (bus drivers) and terminal employes in various terminals, including Company's terminal employees in the Jacksonville, Florida terminal. Said agreement has been continuously in effect since August 19, 1953, and by its terms shall remain in effect until June 30, 1956, and each year thereafter unless terminated by at least 60 days' written notice by either party to the other prior to the date of initial termination or the date of termination of any annual renewal thereof.

4. On November 11, 1954, the Company entered into a contract with Floors, Inc., a corporation incorporated under the laws of the State of Georgia and authorized to do business in Florida, whereby Floors, Inc., and independent contractor, specializing in maid, janitorial and

porter services, agreed to perform certain services in the Company's Jacksonville, Florida terminal, to-wit: cleaning and maintaining rest rooms and generally providing janitorial service for the terminal building, furnishing supervised personnel for handling baggage, express, loading and unloading buses, checking oil, gas and water in buses, cleaning buses and providing other convenience [fol. 41] duties and services. These services have heretofore been performed and are now being performed by Company employees in the Jacksonville terminal, who are members of the Union and represented by it as Bargaining Agent, and (as found in Paragraph 3 above) a class of employees whose wages, hours and working conditions are covered by the collective bargaining agreement of August 19, 1953.

5. Subsequent to the execution of said contract with Floors, Inc., the Company caused to be served upon its said employees engaged in maid, janitorial and porter services, a notice of furlough on account of a reduction in forces effective November 28, 1954, the date Company's contract with Floors, Inc. became effective, whereupon representatives of the Union informed the Company that if its contract with Floors, Inc. was implemented, resulting in the furlough of maids, porters and janitors as aforesaid, the Union would treat the furlough of employees and the subcontracting of work as a breach of the agreement of August 19, 1953, which breach by the Company would justify the Union in treating such breach as a release of it from the "No Strike" provision of the contract and that under such circumstances a strike of the operators and terminal employees would occur, forcing a suspension of the Company's entire motor bus operations.

6. Because of the serious economic consequences to both the Company and its employee members of the Union of such a strike, should it occur, the Company on November 22, 1954 agreed with the duly qualified representative of the Union, H. A. Phillips, its President, that the effective date of furlough and effective date of its contract with Floors, Inc. be temporarily postponed pending an investigation and determination of the legal rights and responsibilities of the parties as fixed by Collective Bar-

[fol. 42] gaining Agreement of August 19, 1953, currently binding on the respective parties.

7. The Company advised the Union that its contract with Floors, Inc. was made under its reserved powers of management and for reasons of efficiency, convenience to the public and economy in operations and that under the contract with Floors, Inc. the Company would achieve an operational savings of $10,125.44 per year.

8. The Company further advised the Union that the said contract and notice of furlough were made in good faith and in the exercise of the sound principles of management imposed by regulatory agencies as due the traveling public and without intent to harm the Union or to impair its status as Collective Bargaining Agent; the Company further advised the Union that said contract was made pursuant to the Company's inherent rights to manage the affairs of the Company which have not been surrendered by the said agreement of August 19, 1953, and under the law respecting operation of public utilities could not have been surrendered or impaired by that agreement.

9. The Union advised the Company that it deemed the proposed contract with Floors, Inc. in violation of the agreement of August 19, 1953 and that the threat of a general strike against the Company's operation would continue and a strike occur if that contract were activated.

10. The Company's contract with Floors, Inc. was made in good faith and in the exercise of sound principles of management.

11. The Company's contract with Floors, Inc. was made pursuant to the Company's inherent right to manage the affairs of the Company.

[fol. 43] 12. The Company's contract with Floors, Inc. will enable the Company to save $10,125.44 in operating costs per year.

13. There is no express prohibition in the collective bargaining agreement between the Company and the Union dated August 19, 1953, against the Company subcontracting work of the nature involved in the contract with Floors, Inc.

From the foregoing facts, I make the following

Conclusions of Law.

1. The Court has jurisdiction.

2. This is a civil action for declaratory judgment.

3. There is no implied prohibition in the collective bargaining agreement between the Company and the Union restricting the Company against subcontracting such services in its terminal operations.

4. The collective bargaining agreement does not deprive the Company of its normal rights of management, and no intention to yield or impair such inherent managerial functions to subcontract that part of its operations involved in the contract with Floors, Inc. can be found in the collective bargaining agreement, nor implied therefrom.

5. The action of the Company in serving the notice of furlough dated November 21, 1954 was in keeping with the requirements of the collective bargaining agreement.

6. The Company has not breached its collective bargaining agreement with the Union.

7. The Company is entitled to consummate immediately (after serving another notice of furlough) its contract with Floors, Inc. dated November 11, 1954.

[fol. 44] 8. The Union is not entitled to prohibit or interfere with the Company's exercise of its inherent rights to manage its business affairs as set forth herein.

9. The services to be performed under subcontracting with a third party may or may not be an integral part of the very subject matter of the collective bargaining agreement but there is no express or implied prohibition against the Company subcontracting this part of its operations.

10. The plaintiff's motion for summary judgment will be granted in conformity with the above expressed findings and defendant's motion for summary judgment will be denied, and summary declaratory judgment entered in accordance herewith.

/s/ Bryan Simpson
United States District Judge

Jacksonville, Florida
July 27, 1955
Milam, McIlvaine, Carroll & Wattles
Coffee & Coffee

I certify the foregoing to be a true and correct copy of the original.

JULIAN A. BLAKE,
Clerk, United States District Court, Southern District of Florida

By /s/ David A. Pellicer
Deputy Clerk

(Seal)

[fol. 45]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

AFFIDAVIT OF ALEXANDER E. WILSON, JR.—
Filed May 24, 1962.

STATE OF GEORGIA)
)
COUNTY OF FULTON)

Personally appeared before the undersigned officer authorized by law to administer oaths, ALEXANDER E. WILSON, JR., who first being duly sworn, deposes and says as follows:

My name is Alexander E. Wilson, Jr., and I am an attorney at law, with offices in the Rhodes-Haverty Building, in Atlanta, Georgia.

I am attorney for Floors, Inc., of Florida, which is a Florida corporation, and a wholly owned subsidiary of Floors, Inc., a Georgia corporation, headquartered in Atlanta, Georgia. I am also Secretary and a member of the Board of Directors of both corporations. Floors, Inc., of Florida is one of the parties to National Labor Relations Board Case No. 12-RC-1209, referred to in the Complaint in the above stated cause. Floors, Inc., of Florida will hereinafter be referred to as "Floors".

Floors is engaged in the business of furnishing clean up, building maintenance, and other allied services, and furnishes such services to varied customers throughout Florida, including The Greyhound Corporation.

Floors employed a total of 384 persons in the State of Florida at the time of the hearing in the above referred to National Labor Relations Board case, Floors now employs substantially in excess of 500 employees in the State of Florida. Only 63 Floors employees work part or full time at Greyhound bus terminals in Florida. 26 Floors employees are based in Tampa, of whom 12 are employed [fol. 46] full or part time at the Tampa Greyhound terminal and 6 at the St. Petersburg Greyhound terminal. Floors employs 17 persons who work at the Miami Grey-

hound terminal, and 28 who work at the Jacksonville Greyhound terminal.

Floors contracts to perform services for its customers for a fixed price, the price usually being determined on a cost-plus basis, and agrees to provide to customers a certain number of man hours of work per week to perform the work contracted for by the customers. A Floors supervisor is then instructed by Floors to supervise the work of such employees.

I have been attorney for Floors, Inc., the Georgia corporation, since 1950, and have been attorney for Floors, Inc., of Florida, since its inception, and thus know all of the matters referred to in this affidavit.

With reference to all of the employees of Floors, Inc., of Florida, only Floors has the right to hire, discharge and discipline such employees. This is specifically true with reference to the Floors employees assigned to work at the Greyhound terminals at Jacksonville, Tampa, St. Petersburg and Miami, Florida. Floors trains all of its employees for the particular work to which they are assigned, and Floors makes the assignment of such employees as it sees fit. It a customer of Floors requests Floors to remove an employee from Greyhound's premises, and a good reason is shown therefor, Floors would normally remove such employee from such premises but would have no responsibility to the customer whatsoever to discharge such employee.

The wages of Floors employees assigned to work at Greyhound terminals are paid by Floors, the pay checks being made up at Floors main office in Atlanta and distributed to the employees through Floors supervisors. Floors determines what to pay its employees and the only [fol. 47] interest which customers of Floors have as to such wages is the fact that most Floors contracts are on a cost-plus basis. Typical of this situation is the fact that all janitors and maids employed by Floors in the Tampa area, working on the premises of various Floors customers, including Greyhound, receive the same wage rate. Floors has the right to fix fringe benefits for its employees and to establish and maintain working conditions for its employees. Greyhound representatives do not supervise or instruct Floors employees on the job,

except in extremely rare instances where emergencies may necessitate such instruction. Any complaints that Greyhound may have as to the work of any of Floors employees must be made to Floors supervisors and not to the employees. Floors is the sole supervisor of the day to day activities of its employees assigned to work on Greyhound premises.

Floors also determines the hours of work of its employes. Floors also at any time may transfer an employee from work being performed for one customer of Floors to work being performed for another customer of Floors. Floors provides a highly specialized service to its customers and retains the right to rotate its employees and to interchange its employees among customers as it sees fit, in order to give all customers the most skilled and efficient result obtainable. Floors exercises this right of rotation.

Floors handles withholding taxes of its employees; Floors controls fringe benefits and pays workmens' compensation, unemployment compensation and social security on its employees; Floors provides supervision of the day to day activities of its employees; Floors owns and furnishes all supplies and equipment used by its employees; Floors determines the hours of work of its employees; and Floors retains and exercises the right to use its employees on whatever job it desires at any time.

[fol. 48] The petitioning Union in National Labor Relations Board case No. 12-RC-1209 is seeking to represent only those employees of Floors who are employed at the four Greyhound terminals located at Jacksonville, Miami, Tampa and St. Petersburg, Florida. Such employees constitute substantially less than one-sixth (1/6) of Floors employes employed in those four areas.

The Greyhound Corporation is in no way the employer or co-employer of Floors employees.

/s/ Alexander E. Wilson, Jr.

SWORN TO AND SUBSCRIBED before me this 21st day of May, 1962.

/s/ Gladys I. Plembeck
Notary Public, Fulton County,
(Seal) Georgia.

My Commission Expires February 10, 1963.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

AFFIDAVIT OF J. W. CABLE—Filed May 24, 1962.

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

Personally appeared before the undersigned officer authorized by law to administer oaths, J. W. CABLE, who first being duly sworn, deposes and says as follows:

My name is J. W. Cable, and I am Regional Manager of Southern Greyhound Lines for the State of Florida, with offices in Jacksonville, Florida. Southern Greyhound Lines is an operating division of The Greyhound Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware. The Grey- [fol. 49] hound Corporation operates passenger buses and terminals, and my duties constitute direct responsibility for the operation of the lines and the terminals in the State of Florida, including those terminals located at Jacksonville, Miami, Tampa and St. Petersburg, Florida.

A few days after May 3, 1962, The Greyhound Corporation (Southern Greyhound Lines Division), hereinafter referred to as the plaintiff, received a copy of the Decision and Direction of Election in National Labor Relations Board case No. 12-RC-1209, a true and exact copy of which is attached to the Complaint in the above stated cause as Exhibit "A". Shortly after May 11, 1962, the plaintiff received a copy of a letter referring to said National Labor Relations Board case No. 12-RC-1209, addressed to Alexander E. Wilson, Jr., Esquire, 615 Rhodes-Haverty Building, Atlanta, Georgia, an exact copy of which is attached to the Complaint in the above stated cause as Exhibit "B".

One or more days subsequent to May 17, 1962, Greyhound received a letter addressed to one of its attorneys from the office of the Twelfth Region, National Labor Relations Board, Tampa, Florida, dated May 17, 1962, a true and correct copy of which letter is attached to the Complaint in this cause as Exhibit "C".

On November 11, 1954, the predecessor to the plaintiff, Florida Greyhound Lines (Division of The Greyhound

Corporation), entered into an agreement with Floors, Inc., (hereinafter referred to as Floors), whereby Floors was to perform certain janitorial and loading services at the Greyhound bus terminal in Jacksonville, Florida, which said contract was altered and revised by a revision dated March 3, 1956, and a later revision dated September 28, 1956, an exact copy of said contract and said revisions being attached to the Complaint in the above stated cause as Exhibits "D-1", "D-2" and "D-3".

[fol. 50] By letter dated November 13, 1957, the plaintiff and Floors entered into a like agreement covering the Miami Greyhound terminal, and by oral agreement of January 15, 1958, confirmed by letter of January 24, 1958, an agreement was entered into between the plaintiff and Floors, covering the Tampa and St. Petersburg Greyhound terminals. True and exact copies of the last referred to letters are attached to the Complaint in the above styled cause, respectively, as Exhibits "D-4" and "D-5".

The agreements between plaintiff and Floors were interpreted and mutually applied by the parties thereto as creating Floors as an independent contractor, and it was mutually understood and agreed that the plaintiff would have no authority whatsoever over the employees of Floors. To my knowledge, only a small number of the employees of Floors in Florida are employed by Floors for services at the plaintiff's terminals, Floors having numerous contracts with other businesses, such as office buildings and airports, for example.

Throughout the life of the contracts at Jacksonville, Miami, Tampa and St. Petersburg Greyhound terminals, the supervisors of Floors have supervised the employees of that corporation who have worked at said terminals, the employees being porters, janitors, and maids, and the employees and supervisors of the plaintiff have had no authority to direct, control or discipline the employees of Floors.

The said employees of Floors are paid by Floors, and only Floors has authority to promote and demote said employees. Floors hires, fires and selects its own employees and assigns them to work at such location as Floors may determine; Floors determines the number of hours worked during the day by each of its employees; with respect

to such employees, Floors keeps payroll records, disciplines, furnishes supplies and working equipment, pays [fol. 51] workmen's compensation, pays social security tax, pays unemployment compensation, withholds for Federal income tax purposes, determines vacations and holidays, and grants leaves of absence. Floors employee interchanges as to work or duties with any employee of the plaintiff. Floors maintains a supervisor of its employees in Jacksonville, a supervisor in Tampa who has charge of both Tampa and St. Petersburg, and a supervisor of its employees at Miami. These supervisors are paid solely by Floors and report solely to Floors. Any complaints which the plaintiff has with regard to the performance of work by any of the employees of Floors are made directly to the supervisors employed by Floors.

I have directed the terminal managers in my region that they were not to supervise or attempt to supervise the employees of Floors, that they were not to give instructions to the employees of Floors, and that all complaints about the work of the employees of Floors were to be directed to and handled by the supervisors of Floors. Every terminal manager and every supervisory employee of Greyhound at the terminals in Jacksonville, Miami, Tampa, and St. Petersburg, has repeatedly received such instructions.

The plaintiff is a party to a collective bargaining agreement with certain divisions of Amalgamated Associaton of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, which covers only the employees of plaintiff and not any of the employees of Floors.

I have read the allegations in the Complaint in this cause, and the same are true and correct.

This affidavit is given for the purpose of being used in support of the relief sought by the plaintiff in said Complaint.

/s/ J. W. Cable

[fol. 52] SWORN TO AND SUBSCRIBED before me this 23 day of May, 1962.

/s/ Agnes D. Nores
Notary Public, State of Florida
at Large

(Seal)

My commission expires: December 5, 1965.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION— May 24, 1962.

The Complaint in the above styled cause having been presented to the Court by an attorney for the plaintiff, ex parte and without notice to the defendant, and said Complaint having been duly considered, together with the affidavits in support thereof, and it clearly appearing from the specific facts shown by the affidavits, one of which verifies the Complaint, that immediate and irreparable injury, loss or damage will result to the plaintiff before notice can be served and a hearing had thereon, and the Court finding that the plaintiff will suffer irreparable injury unless a temporary restraining order be granted, such irreparable injury being the deprivation of rights granted to plaintiff by the Labor Management Relations Act, 1947, as amended, that is to say, the right not to be held to be an employer jointly and together with an independent contractor with respect to the employees of said independent contractor in a representation proceeding under said Act, and that the injury suffered will further be irreparable because plaintiff has no other adequate remedy at law, all as set forth in the Complaint herein, and the Court further finding that this temporary restraining order should be and is granted without notice to the defendant, because the defendant, unless so re- [fol. 53] strained, proposes to hold the representation election hereinafter referred to within such a short period of time that notice is not feasible, the defendant now planning and putting into operation a plan to hold the said representation election on May 28 or May 29, 1962, and to take steps preliminary thereto, the said proposed representation election arising out of the Decision and Direction of the National Labor Relations Board in that Board's case No. 12-RC-1209, wherein the petitioner is Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Pending hearing upon plaintiff's prayer for preliminary injunction, as hereinafter provided, the defendant, Harold A. Boire, as Regional Director of the Twelfth Region, National Labor Relations Board, his successors or designees, and all persons acting in his stead or under his direction or control, be and they hereby are temporarily restrained from conducting or causing to be conducted a representation election of all porters, janitors and maids working at The Greyhound Corporation's bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida, pursuant to the Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209, issued May 3, 1962, wherein The Greyhound Corporation (Southern Greyhound Lines Division) and Floors, Inc., of Florida are alleged to be the employer and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, are alleged to be the petitioner.

2. This temporary restraining order shall become effective upon the giving of security by the plaintiff in the sum of $1,000.00 for the payment of such costs and dam-
[fol. 54] ages as may be incurred or suffered by any person who is found to have been wrongfully restrained by this order, such security to be approved by the Clerk of this Court.

3. This temporary restraining order shall expire 10 days from and after the date of the entry of this order, unless within such time and for good cause shown the same be extended for an additional such period.

4. That plaintiff's prayer for a temporary injunction is hereby treated and deemed to be a motion for preliminary injunction, and the same will come on for hearing before this Court in Chambers, in the Federal Building, Tampa, Florida, at 9:30 o'clock a.m., on the 4th day of June, 1962.

DONE AND ORDERED in Chambers, at Tampa, Florida, this 24th day of May, 1962.

/s/ Joseph P. Lieb
United States District Judge

[Bond on appeal for $1,000.00 approved and filed May 24, 1962 omitted in printing]

[fols. 55-56] • • •

[fol. 57]

[Duly sworn to by Carroll R. Young jurat omitted in printing]
(all in italics)

[fol. 58]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

CERTIFICATE OF SERVICE OF AFFIDAVITS—
Filed May 29, 1962.

This will certify that I have served a copy of the Affidavit of J. W. Cable and a copy of the Affidavit of Alexander E. Wilson, Jr., the originals of which have heretofore been filed in the above stated cause, upon the defendant, by mailing said copies by United States mail, postage prepaid, to Martin Sacks, Esquire, Regional Attorney, Twelfth Region, National Labor Relations Board, Ross Building, 112 East Cass Street, Tampa 2, Florida, this 28th day of May, 1962.

THIS CAUSE came on to be heard upon the oral motion to extend the temporary restraining order heretofore issued by this Court on the 24th day of May, 1962. The Court heard argument of counsel for the respective parties; and it appearing to the Court that the temporary restraining order heretofore issued on the 24th day of [fol. 59] May, 1962, is to expire on this date; and at the time of the oral argument the counsel for the respondent

furnished the Court with authorities and an extensive brief in support of the position of the respondent, and the counsel for the petitioner also submitted further legal briefs in support of its position, and inasmuch as the Court is currently engaged in trying civil jury cases and would not be in a position to consider the matter involved in this cause prior to the expiration date heretofore set; and it further appearing to the Court's satisfaction that the maintenance of the status quo in this cause is well justified and highly desirable; it is, therefore, upon consideration,

ORDERED, ADJUDGED and DECREED:

That the oral motion to extend the temporary restraining order issued by this Court on the 24th day of May, 1962, be, and the same is hereby, granted, and the temporary restraining order be, and the same is hereby, extended until the 14th day of June, 1962. It is further

/s/ Warren E. Hall, Jr.
Attorney

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—June 4, 1962

ORDERED, ADJUDGED and DECREED:

That the bond heretofore posted by the petitioner, The Greyhound Corporation, in compliance with Rule 65 of the Federal Rules of Civil Procedure, shall remain in full force and effect until the expiration of this extended period of time, to-wit, June 14, 1962.

[fol. 60] DONE and ORDERED at Tampa, Florida, this 4th day of June, 1962.

/s/ Joseph P. Lieb,
Judge of United States District Court.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

FINAL DECREE FOR PERMANENT INJUNCTION AND MEMORANDUM OPINION—June 11, 1962

LIEB, District Judge

THIS CAUSE came on to be heard upon the plaintiff's Prayer for Preliminary Injunction, said hearing having been provided in the Court's Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction entered May 24, 1962. Prior to the hearing, the defendant filed a Motion to Dismiss and, in the alternative, a Motion for Summary Judgment. Plaintiff presented its Complaint and exhibits attached thereto, together with an affidavit of an officer of Floors, Inc., of Florida, and an affidavit of the regional manager of plaintiff, the latter affidavit, in part, swearing to the allegations of the complaint. No affidavits were presented on behalf of the defendant nor were any sworn pleadings filed on behalf of said defendant.

After considering the matters hereinabove referred to and hearing argument of counsel for the respective parties, the Court is of the opinion that there are no material issues of fact, and the issues of law as resolved herein make it unnecessary and undesirable for the Court to issue a temporary injunction but that a permanent injunction is warranted by the findings hereinafter set forth.

[fol. 61] The plaintiff contends that a Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209, issuing certain directions to the defendant herein, is contrary to the express provisions of the National Labor Relations Act, as amended, and is beyond the statutory powers vested in the National Labor Relations Board. This contention is predicated upon the fact that in said Decision and Direction of Election, the Board found that a corporate entity other than plaintiff, viz., Floors, Inc., of Florida, hires, pays, disciplines, transfers, promotes and discharges the porters, janitors and maids who are alleged to constitute an appropriate unit for the purposes of col-

lective bargaining; but nevertheless also found that the said Floors, Inc., and the plaintiff, were joint employers of the employees in the said unit. The findings of the Board, allegedly in support of a joint employer relationship, are that the plaintiff's terminal managers confer with Floors' supervisors in setting up work schedules and in determining the number of employees required to meet those schedules; that Floors' supervisors may visit the plaintiff's terminals on an irregular basis, and on occasion may not appear for as much as two days at a time; that the employees receive work instructions from plaintiff's terminal officials; and that on one occasion the plaintiff prompted the discharge of a porter whom it felt to be an unsatisfactory employee. The Court is of the opinion that the findings of the Board, as recited, are, as a matter of law, insufficient to create a joint employer relationship with respect to the employees in said unit; but that, on the contrary, said findings establish as a matter of law that Floors, Inc., is an independent contractor and, for the purposes of collective bargaining, its employees are not the employees of the plaintiff. The Court is therefore of the opinion and finds that with regard to representation proceedings the Board is prohibited [fol. 62] by the provisions of the National Labor Relations Act, as amended, from conducting a representation election wherein the plaintiff is a party-employer with regard to persons who, under the Act, are not its employees. The Court finds that Section 9 of the Act expressly contemplates representation proceedings only as regards the employer of the employees comprising the unit found to be appropriate by the Board. The Court further finds that by virtue of Section 2(3) of the Act, any individual having the status of an independent contractor is expressly excluded from the term "employee", as defined in that Act. As a matter of law, the employees of an independent contractor do not stand in the relationship of employer-employee with regard to the principal who employs the independent contractor for the purpose of Section 9 of the Act, unless the facts involve an alter ego situation, that is where one employer is in fact the alter ego of another employer, which is clearly not the case in this instance. To follow a contrary interpretation of the

Act would be patently absurd. One can readily see that the prime object of the compulsory bargaining feature of the Act is to bargain on wages and working conditions. It is impossible to comprehend how an employer could bargain in good faith about wages with employees who are not paid by said employer and over whom the said employer cannot exercise the power of hiring or firing.

The Court further finds that this case is controlled by the decision of the Supreme Court of the United States in Leedom v. Kyne (1958), 358 U.S. 184, 3 L.Ed.2d 210, 79 Sup. Ct. 180, and that this Court has jurisdiction of the action under Section 24(8) of the Judicial Code, 28 U.S.C.A., § 1337, because the action arises under an Act of Congress regulating commerce. The Court further finds that in its said Decision and Direction of Election the [fol. 63] Board has attempted to act in excess of its delegated power, particularly in view of the legislative history of the portion of the Taft-Hartley Act of 1947 which amended the definition of the word "employee" so as to expressly exclude "independent contractors".

In further support of the Court's finding that there is no employer-employee relationship, as between the persons described in the unit and the plaintiff, are affidavits which are not challenged by counter-affidavits in this case, demonstrating conclusively that, with respect to the said employees, Floors, Inc., and only Floors, Inc., pays social security taxes and unemployment compensation insurance, withholds Federal income taxes, determines rates of pay and hours of employment, provides day to day supervision, furnishes all supplies and equipment used by its employees, and retains and exercises the right to use its employees on whatever job it desires; and that the employees in the purported unit constitute only a relative few of Floors' employees in the areas involved, such other employees being engaged in activities wholly unrelated to the plaintiff.

The defendant's contention is that this Court is without jurisdiction of the subject matter, first, because the subject matter is exclusively within the competence and jurisdiction of the Board by virtue of the National Labor Relations Act, and as amended by the Taft-Hartley Act, and second, even if this Court is not deprived of jurisdic-

tion because of the Acts cited above, it lacks equity jurisdiction because of the availability of other adequate remedies which exist before the Board and before the Court of Appeals through the enforcement proceedings provided for in the Act.

With regard to the first contention, it is the opinion of the Court that the subject matter involved in this liti- [fol. 64] gation is not the subject matter which is within the exclusive jurisdiction and competence of the Board, and the matter involved in this cause does not involve a review of an erroneous decision of the Board but rather involves an attack on the action taken by the Board which it was not authorized to take under the statute. Representation orders of the Board have not been vested with complete immunity from injunction, either by inferences from the National Labor Relations Act or on the principle of Myers v. Bethlehem Shipbuilding Corporation, 303 U.S. 41, 58 S.Ct. 459, 82 L.Ed. 638 (1938). (See Empresa Hondurena de Vapores, S.A., v. Ivan C. McLeod, Regional Director, etc., (2 Cir. 1962), 300 F.2d 222.) Whether or not this Court is authorized to intervene in a representation proceeding depends ultimately on the facts presented to it; and if it appears that the Board exceeded its delegated powers, either by acting contrary to a mandatory prohibition of the Act (see Leedom v. Kyne, supra) or by acting clearly contrary to the over-all spirit of the Act and the manifested intention of Congress (see Empresa Hondurena de Vapores v. McLeod, supra), then this Court cannot fail to exercise its equity powers to prevent a wrong.

With regard to the second contention that this Court lacks equity jurisdiction because of the availability of other remedies, it is the opinion of the Court that this contention is equally without merit. The method allegedly open to the plaintiff to contest the Board's decision is as follows: The plaintiff can refuse to bargain with the Union involved in this case when it is certified, and thereby plaintiff is open to an unfair labor practice charge. (29 U.S.C. § 158(a)(5).) As an incident to the hearing of such charge by the Board, and upon review by a United States Court of Appeals, the certification of the Union can be inquired into. (29 U.S.C. § 159(d), 160.) The de-

[fol. 65] fendant further contends in this respect that even under Leedom V. Kyne, supra, it is only the Union that is entitled to invoke the equity jurisdiction of Federal District Courts.

The defendant's contention that the alleged availability of this method of review bars the plaintiff from seeking relief from this Court does not bear close anaylsis. First, it presupposes that, upon the plaintiff's refusal to bargain in good faith, the Union will file an unfair labor charge. Second, it presupposes that, upon the filing of such an unfair labor charge by the Union, the Board will institute an enforcement proceeding. These presuppositions are patently without foundation. The likelihood that the Union will resort to the use of the powerful weapon of picketing, and thereby tie up with a handful of pickets the entire transportation system of the plaintiff, is far greater and more real than the likelihood that the Union will resort to filing an unfair labor charge with the Board.

Assuming, but not admitting, that the Union will file an unfair labor charge upon the plaintiff's refusal to bargain, the determination of the unfair labor charge by the Board, and the enforcement proceeding, are known to be prolonged and very time-consuming; and picketing of the plaintiff by the Union while the case is being decided by the Court of Appeals could mean complete economic ruin to the plaintiff. Even if the plaintiff would ultimately prevail, its victory would, indeed, be a pyrrhic one. In the light of the foregoing, one is compelled to conclude that the said method of review, allegedly available to the plaintiff, is not an adequate remedy.

With regard to the contention that under Leedom v. Kyne, supra, only the Union can invoke the equity jurisdiction of the District Court, it is the opinion of the Court that nothing in the Leedom case indicates the proposition urged here by the defendant. This contention was re-[fol. 66] jected by the Court in Worthington Pump and Machinery Corporation v. Douds, et al., (1951, D.C.N.Y.), 97 F. Supp. 656, and this Court is in full agreement with the principles expressed in said case.

The defendant also contends that the Court lacks jurisdiction of the members of the National Labor Relations Board who are indispensable parties to this action. This

contention is likewise without merit because the relief sought may be effectively granted against the defendant Regional Director (see Empresa Hondurena de Vapores v. McLeod, supra; Williams v. Fanning (1947), 332 U.S. 490, 92 L. Ed. 95; and Bradley Lumber Co., etc., et al. v. National Labor Relations Board (5 Cir. 1936), 84 F.2d 97).

The defendant also contends that the action is premature. This is merely another way of saying that the plaintiff must exhaust administration remedies provided with regard to unfair labor practice cases, as set forth in the National Labor Relations Act, as amended. This contention is likewise without merit for the same reasons assigned hereinabove with regard to the contention that the Court is without jurisdiction of the subject matter of this action.

Finally the defendant contends that the Complaint fails to state a claim warranting relief. The Court finds this contention likewise to be without merit for the same reasons hereinabove assigned with regard to the contention that the Court is without jurisdiction of the subject matter and the contention that the action is premature.

For the reasons hereinabove assigned, the defendant's Motion to Dismiss will be denied.

Defendant moves, in the alternative, that a Summary Judgment be entered in his favor on the basis of the [fol. 67] Complaint, and exhibits attached thereto, and the Motion, and exhibits attached thereto. The exhibits attached to the Complaint consist of the Decision and Direction of Election, which is the subject matter of the Complaint, together with letters from the assistant to the Regional Director, defendant herein, advising plaintiff of the immediacy of the proposed election, copies of agreements between the plaintiff and Floors, Inc., with respect to the services involved herein, and a certified copy of an order of the United States District Court of the Southern District of Florida, Jacksonville Division, in an action between plaintiff and the petitioning Union in the instant case, wherein the Honorable Bryan Simpson, United States District Judge, found the contract between the plaintiff and Floors, Inc., to constitute an independent contractor relationship.

The exhibits to the Motion of the defendant are comprised of a Petition to the National Labor Relations Board, dated April 17, 1961, wherein the employees in the unit proposed by the National Labor Relations Board in this case petition for a representation election with regard to their employer, Floors, Inc.; an Amended Petition dated May 25, 1961, naming Southeastern Greyhound Lines and Floors, Inc., as the "employers"; a copy of the Decision and Direction of Election, which is also attached as an exhibit to the Complaint; a copy of an Order dated May 25, 1962, denying a Motion for Reconsideration in case No. 12-RC-1209, filed by Floors, Inc.; and a Memorandum in Support of Defendant's Motion to Dismiss the Complaint and for Summary Judgment. The Memorandum in Support of the Motions will not be construed as evidence in the case but merely as a legal memorandum or brief of the defendant.

[fol. 68] The plaintiff filed with the Court, and served upon the defendant, an affidavit of the secretary of Floors, Inc., of Florida, setting forth in detail all of the elements which constitute Floors, Inc., as the sole employer of the employees in the proposed unit. The plaintiff also filed and served upon the defendant the affidavit of J. W. Cable, Regional Manager of the plaintiff for the territory covering the State of Florida, identifying under oath the various attachments to the Complaint, swearing to the allegations of the Complaint, and setting forth in substantial detail the relationship between the plaintiff and Floors, Inc., demonstrating a pure independent contractor relationship.

Inasmuch as the Motion for Summary Judgment of the defendant raises no issue of fact, and inasmuch as said Motion for Summary Judgment does not refute the allegations of the Complaint or of the affidavits in support thereof, but relies upon the same contentions of law hereinabove referred to with regard to the Motion to Dismiss, and said contentions being found by the Court to be without merit, the said Motion for Summary Judgment will likewise be denied.

The Court finds that the plaintiff has a statutory right not to be held to be an employer jointly and together with an independent contractor with respect to the employees

of said independent contractor in a representative proceeding under the Act, and that the violation of the Act on the part of the National Labor Relations Board and the deprivation of said right of the plaintiff will cause the plaintiff to suffer irreparable injury unless the injunction prayed for be granted. The Court finds that the plaintiff has no adequate remedy at law. It is therefore, upon consideration,

ORDERED, ADJUDGED and DECREED:

1. That the defendant, Harold A. Boire, as Regional Director of the Twelfth Region, National Labor Relations [fol. 69] Board, his successors or designees, and all persons acting in his stead or under his direction or control be, and they are hereby, permanently enjoined from conducting, or causing to be conducted, a representation election of all porters, janitors and maids working at The Greyhound Corporation's bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida, pursuant to the Decision and Direction of Election of the National Labor Relations Board in that Board's case No. 12-RC-1209, issued May 3, 1962, wherein the Greyhound Corporation (Southern Greyhound Lines Division) and Floors, Inc., of Florida, are alleged to be the employer, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, is alleged to be the petitioner.

2. That defendant's Motion to Dismiss be, and the same is hereby, denied.

3. That defendant's Motion for Summary Judgment be, and the same is hereby, denied.

4. That the defendant was not wrongfully restrained by the Tempofary Restraining Order heretofore issued in this case and, therefore, that the bond given by the plaintiff as security required by Rule 65 of the Federal Rules of Civil Procedure may be dissolved and no other or further security need be given by the plaintiff in this cause.

DONE and ORDERED at Tampa, Florida, this 11th day of June, 1962.

/s/ Joseph P. Lieb,
United States District Judge

[fol. 70]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

DEFENDANT'S NOTICE OF APPEAL—Filed June 18, 1962.

Notice is hereby given that Harold A. Boire, Regional Director, Twelfth Region, National Labor Relations Board, defendant above named, appeals to the United States Court of Appeals for the Fifth Circuit from the final Order of this Court, in the above-entitled case, permanently enjoining any further proceedings in Case No. 12-RC-1209 on the docket of the National Labor Relations Board, which Order was entered on June 11, 1962.

/s/ Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board
Washington 25, D. C.

and

Martin Sacks
Regional Attorney
12th Region, NLRB
Ross Building,
112 Cass Street
Tampa, Florida

Dated at Washington, D. C., this 15th day of June, 1962.

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

DEFENDANT'S DESIGNATION OF RECORD ON APPEAL —Filed June 18, 1962.

The defendant hereby designates for the purposes of appeal the entire record including briefs, memoranda, etc., in the above entitled case and respectfully requests [fol. 71] that the record be transmitted forthwith to the Clerk of the Court of Appeals for the Fifth Circuit.

/s/ Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board
Washington 25, D. C.

and

Martin Sacks,
Regional Attorney
12th Region, NLRB
Ross Building
112 Cass Street
Tampa, Florida

Dated at Washington, D. C., this 15th day of June, 1962.

[Certificate of Service omitted in printing]

[fol. 72]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

DOCKET ENTRIES

DATE	PROCEEDINGS
1962	
May 23	Complaint filed.
May 24	Affidavit of Alexander E. Wilson, Jr.
24	Affidavit of J. W. Cable.
24	Temporary Restraining Order and Order Setting Hearing for Preliminary Injunction.
24	Pltfs. Bond in the sum of $1,000.00 filed.
29	Plaintiff's Certificate of Service, of copies of Affidavits.
June 5	Order that Temporary Restraining Order is Extended until June 14, 1962; Bond heretofore posted by petitioner shall remain in full force and effect until the expiration of June 14, 1962 (furnished copies mailed attys.)
12	Final Decree for Permanent Injunction and Memorandum Opinion (furnished copies mailed attys.)
18	Defendant's Notice of Appeal.
18	Defendant's Designation of Record on Appeal.
18	Defendant's Certificate of Service.

I certify the foregoing to be a true and correct copy of the original.

JULIAN A. BLAKE,
Clerk, United States District Court, Southern District of Florida

By: /s/ Betty Hansen
Deputy Clerk

[fol. 72a]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 4414-Civ.-T

THE GREYHOUND CORPORATION, a Delaware Corporation, PLAINTIFF

v.

HAROLD A. BOIRE, as Regional Director, Twelfth Region, National Labor Relations Board, DEFENDANT

[File Endorsement Omitted]

MOTION OF DEFENDANT REGIONAL DIRECTOR TO DISMISS COMPLAINT, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT IN HIS FAVOR—Filed June 4, 1962

1. Defendant, by his attorneys, moves that the complaint herein be dismissed because:

(a) This Court is without jurisdiction of the subject matter of the action;

(b) This Court lacks jurisdiction over the members of the National Labor Relations Board, who are indispensable parties to the action;

(c) The action is premature;

(d) The complaint fails to state a claim warranting relief.

2. In the alternative, defendant moves that summary judgment be entered in his favor, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the basis of the Complaint, attached exhibits, and this motion and exhibits attached thereto.

WHEREFORE, it is respectfully requested that the complaint be dismissed or, in the alternative, that summary judgment be entered in defendant's favor.

Dated at Washington, D. C., this 29th day of May, 1962.

/s/ Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board
Washington 25, D. C.

and

MARTIN SACKS, Regional Attorney
12th Region, NLRB
Ross Building, 112 Cass Street
Tampa, Florida

* * * * *

[fol. 72b] **Exhibit A to Motion**

Form NLRB-502 ([illegible])

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

DO NOT WRITE IN THIS SPACE
CASE NO. [illegible]
DATE FILED [illegible]

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority.

1. Purpose of this Petition (Check only the one box which is appropriate)

A. [X] RC—Certification of Representatives (Individual, Group, Labor Organization).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.*

B. [ ] RM—Representation (Employer).—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.*

C. [ ] RD—Decertification.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.*

D. [ ] UD—Withdrawal of Union Shop Authority.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

*NOTE.—If a charge under section 8(b)(7) of the act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.

2. NAME OF EMPLOYER: [illegible], Inc. | EMPLOYER REPRESENTATIVE TO CONTACT: | PHONE NO.:

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, zone, and State): [illegible] Avenue, Atlanta, Georgia

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) | 4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

5. Description of Unit Involved (If more space is needed, continue on another sheet)

Included

All porters and maids located at the [illegible] bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida

Excluded

All other employees

6a. NUMBER OF EMPLOYEES IN UNIT: 65 Approx.

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? [X] YES [ ] NO

(If you have checked box RC in 1.A. above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on [illegible] (Month, day, year) and Employer declined recognition on or about .... (Month, day, year) (If no reply received, so state)

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME: None | AFFILIATION:

ADDRESS: | DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

10. IF YOU HAVE CHECKED BOX UD IN 1.D. ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES .... NO ....

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF .... (Insert name) A LABOR ORGANIZATION, OF .... (Insert address) SINCE .... (Show month, day, and year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO
(Petitioner and affiliation, if any)

By /s/ [illegible] (Signature of representative or person filing petition) General Executive Board Member (Title, if any)

[illegible]

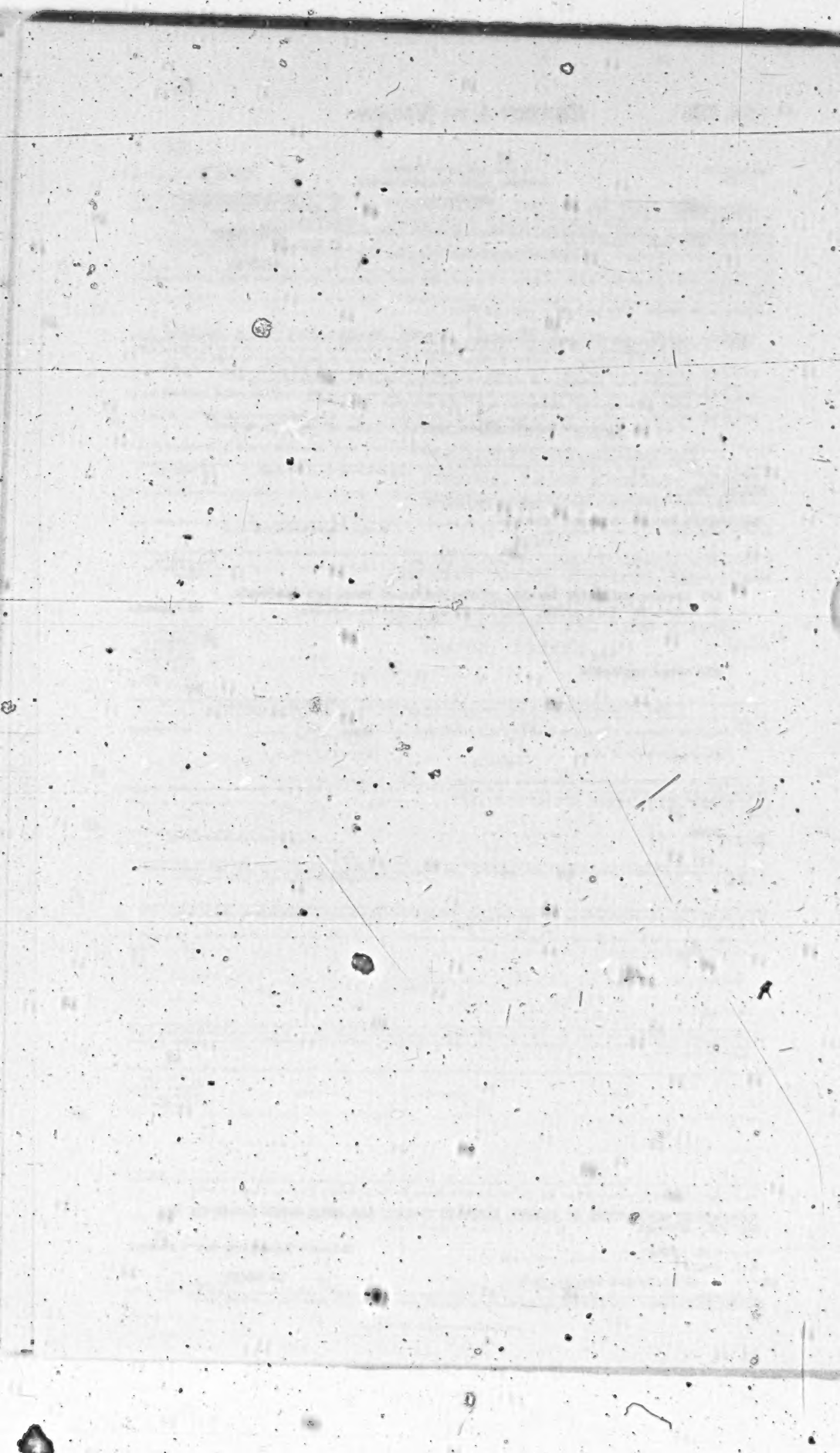
Address [illegible] (Street and number, city, zone, and State) [illegible] (Telephone number)

[illegible]

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

U.S. GOVERNMENT PRINTING OFFICE [illegible]

GPO [illegible]



[fol. 72c]

EXHIBIT A

Form NLRB-502 (11-55)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

Form approved. Budget Bureau No. [illegible]

DO NOT WRITE IN THIS SPACE

CASE NO. [illegible]

DATE FILED [illegible]

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority.

1. Purpose of this Petition (Check only the one box which is appropriate)

A. ☒ RC—CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION).—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.*

B. ☐ RM—REPRESENTATION (EMPLOYER).—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.*

C. ☐ RD—DECERTIFICATION.—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.*

D. ☐ UD—WITHDRAWAL OF UNION SHOP AUTHORITY.—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

*NOTE.—If a charge under section 8(b)(7) of the act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.

2. NAME OF EMPLOYER: [illegible]

EMPLOYER REPRESENTATIVE TO CONTACT:

PHONE NO.:

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, state, and State): [illegible]

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

5. Description of Unit Involved (If more space is needed, continue on another sheet)

Included

All porters and maids located at the Greyhound Corp. bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida

Excluded

All other employees

6a. NUMBER OF EMPLOYEES IN UNIT: [illegible] Approx.

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT? ☐ YES ☐ NO

(If you have checked box RC in 1.A. above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on .... None (Month, day, year) .... and Employer declined recognition on or about .... (Month, day, year) (If no reply received, so state)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME: None

AFFILIATION:

ADDRESS:

DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

10. IF YOU HAVE CHECKED BOX UD IN 1.D. ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES .... NO ....

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF .... (Insert name) .... A LABOR ORGANIZATION, OF .... (Insert address) .... SINCE .... (Show month, day, and year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO
(Petitioner and affiliation, if any)

By /s/ [illegible] (Signature of representative or person filing petition) .... Counsel (Title, if any)

Address [illegible] .... (Street and number, city, zone, and State) .... [illegible] (Telephone number)

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

U.S. GOVERNMENT PRINTING OFFICE [illegible]

GPO [illegible]

[fol. 72d] EXHIBIT B TO MOTION

Form NLRB 1415
(6-61)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE GREYHOUND CORPORATION (SOUTHERN GREYHOUND LINES DIVISION) AND FLOORS, INC. OF FLORIDA [1]
EMPLOYER

and

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL-CIO, PETITIONER

Case No. 12-RC-1209

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. His rulings made at the hearing are free from prejudicial error and are affirmed.

* * * *

Upon the entire record, the Board finds:

1. The employer is engaged in commerce within the meaning of the Act.
2. The labor organization named below claim(s) to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9 (b) of the Act:

All porters, janitors [2] and maids working at the Grey-

[1] Names appear as corrected at the hearing. Herein, they are referred to as Greyhound and Floors, respectively.

[2] The Petition was amended at the hearing to include janitors.

hound Corporation's bus terminals in Miami, St. Petersburg, Tampa and Jacksonville, Florida, excluding all other employees of the Greyhound Corporation and Floors, Inc. of Florida."

[1] Petitioner seeks a single unit of all porters, janitors and maids employed in the above-described Greyhound terminals, contending that Greyhound is the Employer of the employees sought, or at least their joint employer with Floors, and that the unit is appropriate as a residual unit of all unrepresented Greyhound employees at the terminals in issue. Alternatively, Petitioner contends that even if the Board finds that the employees sought are employed by Floors, and that Floors is an independent contractor, the unit sought is still appropriate because such employees comprise a homogeneous, distinct group. Greyhound and Floors contend that the porters, janitors and maids are employed by Floors, an independent contractor, and Floors further argues that the appropriate unit consists of either all its employees in the above-described cities or three seperate units of all its employees in (1) Tampa-St. Petersburg, (2) Miami, and (3) Jacksonville. Petitioner is unwilling to represent Floors' employees who do not work at the above-described terminals.

It appears that Floors hires, pays, disciplines, transfers, promotes and discharges the porters, janitors and maids. However, it also appears that Greyhound's terminal managers confer with Floors' supervisors in setting up work schedules and in determining the number of employees required to meet those schedules. Moreover, it also appears that Floors' supervisors may visit the Greyhound terminals on an irregular basis and on occasion may not appear for as much as two days at a time; and that the employees sought, including porters in handling baggage, receive work instructions from Greyhound terminal officials. In addition, the record also shows that Greyhound, on one occasion, prompted the discharge of a porter whom it felt to be an unsatisfactory employee. In view of the common control over the employees sought, we find both Greyhound and Floors to be their joint employer. See *Panther Coal Company, Inc., et al.*, 128 NLRB 409, *West Texas Utilities Company*, 108 NLRB 407, 413-414, enf'd 218 F. 2d 824 (C.A. 5); cert. denied, 349 U.S. 953. We find further that such a unit consisting of all employees under the joint employer relationship is appropriate.

PHILIP RAY RODGERS, MEMBER, dissenting:

On the basis of the record herein, I would find that the employees sought are employees of Floors, that Floors is an independent contractor, and that the only appropriate unit is one comprised of all of Floors' employees in the above-described localities. Accordingly, I would dismiss the petition.

Philip Ray Rodgers, Member
NATIONAL LABOR RELATIONS BOARD

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for collective bargaining purposes, by Amalgamated Association of Street, Electric Railway, and Motor Coast Employees of America, AFL-CIO.

FRANK W. MCCULLOCH, Chairman
BOYD LEEDOM, Member
JOHN H. FANNING, Member
GERALD A. BROWN, Member
NATIONAL LABOR RELATIONS BOARD

[SEAL]

Dated, Washington, D. C. May 3, 1962.

[fol. 72e] EXHIBIT C TO MOTION

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 12-RC-1209

THE GREYHOUND CORPORATION (SOUTHERN GREYHOUND LINES DIVISION) AND FLOORS, INC. OF FLORIDA, EMPLOYER

and

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AFL-CIO, PETITIONER

ORDER DENYING MOTION

On May 8, 1962, the Board issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, on May 11, 1962, Floors, Inc. filed a Motion for Reconsideration, in which it moved the Board to grant its motion that the aforesaid Decision and Direction of Election be vacated and the Petition dismissed. On May 16, 1962, the Petitioner filed a statement in opposition. The Board having duly considered the matter,

IT IS HEREBY ORDERED that the said Motion for Reconsideration be, and it hereby is, denied, as presenting nothing not previously considered by the Board.

Dated, Washington, D. C., May 25, 1962.

By direction of the Board:

GEORGE A. LEET
Associate Executive Secretary

[fols. 73-96] * * *

[fol. 97]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION.—October 10, 1962.

[Omitted in Printing]

[fol. 98]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19755

HAROLD A. BOIRE, Regional Director, Twelfth Region, National Labor Relations Board, APPELLANT

versus

THE GREYHOUND CORPORATION, APPELLEE

Appeal from the United States District Court for the Southern District of Florida, at Tampa.

Before JONES and BELL, Circuit Judges, and CARSWELL, District Judge.

OPINION—November 21, 1962

PER CURIAM: The questions in this important case were carefully considered by the district court and discussed by the judge to whom the case was assigned. *Greyhound Corporation v. Boire*, 205 F. Supp. 686. We find ourselves in agreement with the principles there stated and the decision there reached. The judgment of the district court is

AFFIRMED.

[fol. 99]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 19,755

D. C. Docket No. 4414-Civ-T

HAROLD A. BOIRE, Regional Director, Twelfth Region, National Labor Relations Board, APPELLANT

versus

THE GREYHOUND CORPORATION, APPELLEE

Appeal from the United States District Court for the Southern District of Florida.

Before JONES and BELL, Circuit Judges, and CARSWELL, District Judge.

JUDGMENT—November 21, 1962

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Issued: December 19, 1962

[fol. 100]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 101]

SUPREME COURT OF THE UNITED STATES

No. 844, October Term, 1962

HAROLD A. BOIRE, Regional Director, Twelfth Region, National Labor Relations Board, PETITIONER

vs.

THE GREYHOUND CORPORATION

ORDER ALLOWING CERTIORARI—April 15, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1963 689239 1230